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Agenda item 9

REPORT OF THE COMMISSION ON ITS NINETEENTH SESSION

Draft report

Addendum

Rapporteur: Rosa Carmina RECINOS-HERNANDEZ (Guatemala)

Chapter ___. INTERNATIONAL, REGIONAL AND BILATERAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

1. The Commission considered item 6 of its agenda at its 5th and 6th meetings, on 7 April 1993. It had before it the report of the Secretary-General on the international framework for transnational corporations (E/C.10/1993/8).

2. The Chief of the Legal, Environment and Transitional Economies Branch of the Transnational Corporations and Management Division introduced the report of the Secretary-General. She noted that the most important developments at the multilateral level were the adoption of the World Bank Guidelines on the Treatment of Foreign Direct Investment, the issuance of draft agreements within the Uruguay Round of multilateral trade negotiations and the approval of Agenda 21 following the Earth Summit in Rio de Janeiro. States now recognized the necessity or desirability of creating an effective international framework for foreign direct investment.

3. At the regional and international levels there were important developments in foreign investment regulations, including the North American Free Trade Agreement, as well as decisions of the Organisation for Economic Cooperation and Development (OECD) and the European Community (EC). Further progress had been made towards regional economic cooperation affecting foreign direct investment in Africa, Asia and the Americas. In furthering the contributions to the

network of international arrangements, bilateral investment treaties continued to expand.

4. An expert representing the World Bank gave a brief description of the World Bank Guidelines on the Treatment of Foreign Direct Investment. He noted that the Guidelines emphasized the establishment of a favourable legal regime for all investors, recommended a policy of open admission and provided that States should not expropriate foreign investments except in accordance with applicable legal procedures. The major value of the Guidelines was that they partially codified existing standards and also broadly aimed at furthering or adding to existing laws.

5. Several delegations stressed the need for an international framework for global business and expressed great interest in the World Bank Guidelines, while requesting more clarification on their scope and nature.

6. A representative of the insurance industry, in making a case for greater regulation and harmonization of the insurance industry throughout the world, noted that denial of market entry was currently the biggest hurdle faced by the insurance industry. There were many countries which mandated that reinsurance be provided by State-licensed monopolies. A global harmonization scheme should be created. There was no organization more appropriate than the United Nations and the Transnational Corporations and Management Division to analyse the possibilities of harmonizing the insurance industry world-wide.

7. One expert adviser noted that in his country, although there were three agencies that guaranteed and insured foreign direct investment, none had been set up under international norms.

8. A representative of the business community, speaking on corruption, said that the effects of corruption in developing countries were more devastating than in the industrialized countries because they undermined the basic economic and social development of those countries. On the issue of "facilitation payments", he said that until working conditions were improved, particularly pay for civil servants, it would be difficult to make significant inroads regarding "facilitation payments". It had been estimated that corruption in developing countries drove up the cost of business by as much as 30 to 40 per cent. In an effort to stem corruption, such private sector institutions as Transparency International had been established.

9. Other delegations expressed reservations about regulating the behaviour of transnational corporations through an international framework. For such a framework to be effective, it would have to be incorporated into national laws since transnational corporations could shift their production and assets from one territory to another with relative ease.

10. An observer, commenting on the difficulty faced by developing countries in trying to regulate global business, said that it was time for a fresh approach to be taken as there was no consensus on a code of conduct. The new approach could include the preparation of guidelines for global business or other suitable international instrument. His Government had proposed a renewal of the Commission's mandate to continue work on an international framework of good business practices. Moreover, it had proposed an internationally agreed-upon

set of principles, dealing with such issues as environmental protection, consumer protection, restrictive business practices and the treatment of global businesses. A timetable should be set for completion of negotiations. He further proposed that the Commission endorse the convening of a symposium on guidelines for global business, to be held later in 1993. Some delegations expressed support for the preparation of guidelines.

11. With regard to regional frameworks, one delegation said that a recently agreed regional pact would hinder the flow of foreign direct investment to countries seeking to export to that region's market. The regional pact could seriously displace production in some developing countries. The delegation called for consistency between that regional agreement and GATT rules.

12. Two delegations expressed a desire for more emphasis in the work of the Division on regional integration efforts made by African countries.

13. A few delegations stressed the importance of bilateral agreements. Even if regional agreements were concluded on the basis of general investment norms, bilateral agreements were needed for the technical aspects, particularly with regard to the legal systems of the countries involved. One delegation was of the view that more importance should be given to that issue.

Action taken by the Commission

14. The Commission:

(a) Took note of the report of the Secretary-General on the international framework for transnational corporations (E/C.10/1993/8);

(b) Requested the Secretary-General to continue the work in that area, including the possibility of convening an international symposium to consider new guidelines for global business.